United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,405

United States Court of Appeals
For the
District of Columbia Circuit
FILED APR 23 1958
Joseph W. Stewart
CLERK

PATRICIA G. BROOKS,

Appellant,

v.

WILLIAM C. DeLACY,

Appellee.

68

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WARD B. McCARTHY

GEORGE C. VOURNAS

Investment Building
Washington, D. C.

Attorneys for Appellant.

Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

APPELLANT'S STATEMENT OF QUESTIONS PRESENTED

I.

May the Probate Branch of the District Court deny Letters of Administration to an adult daughter who is not disqualified under 20-101 D.C. Code (1951) and who has neither committed an act or asserted a claim against the Estate which would have justified the revoking of Letters of Administration had they been granted to her, and appoint a total stranger as Administrator?

II.

Does conflict between a daughter and her stepmother, as may exist in this case, constitute a disqualification under 20-101 of D. C. Code (1951)?

INDEX

	Page
JURISDICTIONAL STATEMENT	1
STATEMENT OF CASE	2
STATEMENT OF POINTS	3
SUMMARY OF ARGUMENT	4
ARGUMENT:	
The Probate Court Is A Court Of Limited Jurisdiction Whose Powers And Duties Are Defined By The Code. It May Not Deny Letters Of Administration To A Person Preferred By The Code Except For Reasons Stated In The Code. No Such Reasons Were Assigned Herein	4
CONCLUSION	11
SUPPLEMENT	
D. C. Code (1951)	A-1
Annotated Code of Maryland (1957) Article 93	A-1

CITATIONS

Cases:

Allen's Estate, in re: 20 Fed. Supp. 243	10
Bowie v. Bowie, 73 Md. 232, 20 A. 916	7
Brosnan v. Brosnan, 55 App. D.C. 149, 289 F. 547	6
Carpenter v. Jones, 44 Md. 628	7
Cephalis v. Briscoe, 90 A. (2) 602, 202 Md. 419	8
Cook v. Carr, 19 Md. 1	7
Diamantopoulos v. Glekas, 56 App. D.C. 151, 152, 11 F. (2) 200	5
Goldborough v. Marshall et al., 100 U.S. App. D.C. 134, 243 F. (2) 240	10
Haviland v. Harris, 60 App. D.C. 255, 50 F. (2) 1069	5
Horton v. Horton, 157 Md. 127, 145 A. 355	7
Kearney v. Turner, 28 Md. 423	8
Langfelder v. Langfelder, 189 Md. 88, 54 A. (2) 312	7, 9
Lewis v. Logan, 120 Md. 329, 334, 87 A. 750	8
McColgan, Admr. v. Kenny, 68 Md. 260	8
Mobley v. Mobley, 149 Md. 401, 131 A. 770	11
Pascucci v. Alsop, 147 F. (2) 880, 79 U.S. App. D.C. 354, Cert. denied 325 U.S. 868, 65 S. Ct. 1406, 89 L. Ed. 1897	4

INDEX (Cont'd.)

	Page
Randall v. Bockhorst, 98 U.S. App. D.C. 77	5, 9
Schaumloeffel v. Schaumloeffel, 186 Md. 280, 46 A. (2) 692	8
Watkins v. Rives, 75 U.S. App. D.C. 109, 125 F. (2) 33 at 35	4
Williams v. Williams, 24 App. D.C. 214, 217, 25 App. D.C. 32	5, 6, 11

STATUTES

District of Columbia Code, 1951 ed.	
Sec. 18-701	A-1
Sec. 18-703	A-1
Sec. 20-101	10, 11, A-1
Sec. 20-107	10
Sec. 20-201	4, A-1
Sec. 20-204	3, 5, 9, A-1
Sec. 20-205	5
Sec. 20-207	5
Sec. 20-215	5, 9, 11
Sec. 20-216	5, A-1
Sec. 49-207	5, 10
Annotated Code of Maryland (1957), Art. 93.	
Sec. 20	A-1
Sec. 22	A-2
Sec. 34	A-2
Sec. 35	A-2
Sec. 59	A-1
Sec. 134	A-1
Sec. 136	A-1

TEXTS

21 Am. Jur. "Executors and Administrators", Sec. 59	6
33 C.J.S. "Executors and Administrators", Sec. 34	6

UNITED STATES COURT OF APPEALS

For The District of Columbia Circuit

No. 14,405

PATRICIA G. BROOKS,

Appellant,

v.

WILLIAM C. DeLACY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a final order of the United States District Court for the District of Columbia, Holding a Probate Court, dated January 28, 1958, denying Appellant's petition for Letters of Administration, and granting Letters of Administration to Appellee.

Notice of appeal from that Order was filed on February 26, 1958. Jurisdiction of this Court is founded on Sec. 1291 of Title 28 of the United States Code and Sec. 504 of Title 11, District of Columbia Code (1951), Act of March 3, 1901, 31 Stat. 1208, Ch. 854, Sec. 119 as amended by Act of June 30, 1902, 32 Stat. 525, Ch. 1329.

STATEMENT OF CASE

Walter G. Maholm, owning no real estate or interest therein, died on May 9, 1956, a resident of the District of Columbia, leaving surviving him as his only next of kin Patricia G. Brooks, a resident of the State of Virginia, an adult daughter by a prior marriage and Appellant here, and Mary J. Maholm, of the District of Columbia, his widow by a second marriage. (App. 2)

On November 26, 1956 the widow petitioned for probate of a paper writing bearing date the 29th day of March, 1955, alleging it to be the Last Will and Testament of the deceased, leaving decedent's entire estate to her, the widow. (App. 4)

The daughter (Appellant) filed a Caveat and only two issues were submitted to the jury: - (1) "Was the said paper writing bearing date the 29th day of March, 1955 the Last Will and Testament of said deceased?"; and (2) "Did the attesting witnesses to said alleged will, or any of them, sign his or her name as a witness to the said alleged will, at the request of and in the presence of the said Walter G. Maholm?"

The jury answered both in the negative, and the Court, by an Order dated November 25, 1957, denied the widow's petition for probate and record and adjudged that Walter G. Maholm died intestate. (App. 1)

No appeal having been taken from this Order (App. 13), the appellant-daughter petitioned for Letters of Administration. (App. 2)

The widow filed a Cross-petition (App. 4) alleging among other things that the Estate was liable for approximately $1,926.43 for counsel fees, court costs, witness fees, expert witness fees, etc., for defending the caveat proceeding. (App. 6)

The appellant-daughter challenged the widow's right to appointment on the grounds that (1) the widow knew or should have known that the will she offered for probate was a forgery; (2) the defense of the caveat was for the sole benefit of the widow; and (3) the expenditure of

$1,926.43 was intended to promote solely the widow's personal interest. (App. 7)

On January 28, 1958 the petition and cross-petition and the answers thereto came on for oral argument before Judge Keech (App. 11), who, on January 28, 1958 entered an Order denying Letters of Administration to either daughter or widow on the ground "that the best interests of the estate require that a disinterested party be appointed to administer it because of the conflict between the two petitioners, the sole heirs at law", and appointed the Appellee, William C. DeLacy, Esq., a member of the Bar, as Administrator. (App. 21) (Italics ours). Mr. DeLacy had not appeared in the case prior to his appointment.

Only the daughter appealed from the above Order of January 28, 1958. No appeal having been taken by the widow, the Order as against her is final.

STATEMENT OF POINTS

I.

Appellant being one of a group of persons entitled to Letters of Administration under 20-204 of the D.C. Code (1951), and not disqualified by any specific provision of the Code, the Probate Court erred in denying her petition and appointing a stranger as Administrator of her father's estate.

II.

If one of the two persons having preference under 20-204 D.C. Code (1951) is not disqualified by the Code, the Court does not have discretion to deny the applications of both two preferred persons and appoint a total stranger as Administrator.

III.

Does a conflict between a daughter, whose interest in no wise conflicts with estate interest, and her stepmother, whose interest manifestly conflicts with that of the estate, constitute disqualification for both

under 20-101 D. C. Code (1951) so as to justify the Probate Court to appoint as Administrator a total stranger?

SUMMARY OF ARGUMENT

The Probate Court is a Court of limited jurisdiction whose powers and duties are defined by the Code. It may not deny Administration to a preferred person except for reasons enumerated in the Code.

ARGUMENT

THE PROBATE COURT IS A COURT OF LIMITED JURISDICTION WHOSE POWERS AND DUTIES ARE DEFINED BY THE CODE. IT MAY NOT DENY LETTERS OF ADMINISTRATION TO A PERSON PREFERRED BY THE CODE EXCEPT FOR REASONS STATED IN THE CODE. NO SUCH REASONS WERE ASSIGNED HEREIN.

The question is both new and novel in this jurisdiction. May the exercise of judicial discretion deprive a fully competent and qualified daughter of a vested right of appointment as administratrix of her father's estate?

The Maryland legislature, by an Act of 1798, provided for the distribution of intestate estates and priority of appointment of administrators. That Act, together with amendments, was the law in this jurisdiction until about 1801. When the Congress enacted the Code of 1901, it adopted the then-existing probate laws of Maryland with slight changes. (Pascucci v. Alsop, 147 F.(2d) 880, 79 U.S. App. D.C. 354, Cert. denied 325 U.S. 868, 65 S.Ct. 1406, 89 L. Ed. 1897).

In Watkins v. Rives, 75 U.S. App. D.C. 109, 125 F.(2d) 33 at 35, this Court said:

> "As has been stated frequently, the probate court is one of limited powers and jurisdiction. Generally speaking, it exercises the same powers as were conferred upon the Orphans' Court of Maryland by the Act of 1798, together with such additional powers as have been conferred by Congress since that time. Although Maryland statutes and

> Maryland decisions of later than 1801 do not constitute the law of the District of Columbia, nevertheless, this court has, customarily, looked to later decisions of the Court of Appeals of Maryland for assistance, not merely in interpreting the law which was inherited from that State, but also in interpreting later statutes of the District which are the same or closely similar to those of Maryland." (Emphasis added)

The basis of the Code and the Act governing descents was primarily the family unit, i.e., husband, wife, child or children, and in their absence, next of kin took by prescribed classes and the right of administration followed the rights of descent. (See Supplement for comparison of D.C. and Maryland statutes.)

The Probate Court had discretion under 20-204 of the Code to appoint either the daughter or the widow unless either or both were disqualified.

However, if either the daughter or the widow is not disqualified for grounds stated in the Code, one of them must, upon application, be granted Letters of Administration, and the Probate Court had no authority to deny both petitions and appoint a total stranger.

The right to administration is a valuable right and those upon whom that right has been conferred by statute should not be deprived of it, except as the statute has provided. Williams v. Williams, 24 App. D.C. 214, 217; Diamantopoulos v. Glekas, 56 App. D.C. 151, 152, 11 F. (2d) 200.

We are not unmindful of this Court's decisions in Haviland v. Harris, 60 App. D.C. 255, 50 F.(2d) 1069, construing 20-105, appointment of successor of deceased administrator; and Randall v. Bockhorst, 98 U.S. App. D.C. 77 construing 20-204, 20-205 and 20-207.

The Code, in Secs. 20-204 through 20-215 prescribes the order of preference for the appointment of administrators, and not until all preferences have been exhausted is the appointment of a total stranger sanctioned. (20-216).

This Court and the Maryland Courts have consistently adhered to the general rule that statutes regulating the order in which administration "shall" be granted are mandatory and the Court's discretion is limited to the choosing between members of a particular class.

The general rule of statutory construction is stated in 21 Am. Jur. "Executors and Administrators", Sec. 59:

> "although the court or appointing officer has no discretion in appointing an administrator who is competent and falls within the class named in the statute, there are several situations in which the court may exercise discretion. For example, the court may exercise its discretion in appointing an administrator where those who are entitled to letters fail to apply therefor within a given time, or otherwise waive their right, as well as where there is no person entitled to administer as of right. Where the statute provides that the surviving spouse or next of kin, or both, as the court may determine, must be appointed if suitable and competent to discharge the trust, it is for the court to determine whether such persons are incompetent or unsuitable, as well as to decide between members of a class who are equally entitled, as for example, between equality of relationship and interest."

and at 33 C. J. S., "Executors and Administrators", Sec. 34:

> "Statutes regulating the order in which administration may be granted are ordinarily construed as mandatory and as leaving the courts no discretion in the matter, save where there are two or more persons equally entitled under the statute, or where a question arises as to the fitness or qualifications of the person or persons primarily entitled to the appointment."

This Court adhered to this rule of statutory construction as early as 1904 in the two cases of Williams v. Williams, 24 App. D. C. 215 and 25 App. D. C. 32.

In 1923 the Court, in Brosnan v. Brosnan, 53 App. D. C. 149, 289 Fed. 547 (a removal case) said, at page 152:

> "....These statutory regulations imply a right to appointment upon the part of the described parties in the absence of disqualifications." (Italics ours)

Where two or more persons are equally entitled to administration, choice is discretion of the Court. (Langfelder v. Langfelder, 189 Md. 88, 54 A(2) 312), but seniority in age gives no priority of right (Bowie v. Bowie, 73 Md. 232, 20A. 916.) But the Court's discretion must not be arbitrary or capricious and the Court should consider relative merits and fitness of applicants. Langfelder v. Langfelder, supra; Horton v. Horton, 157 Md. 127, 145 A. 355.

In Cook v. Carr, 19 Md. 1, the Court said:

> "It is true, that in a case where two or more persons are equally entitled to letters of administration, the Court may, in its discretion, determine to which of them the letters shall go, but its powers, in that respect, results from its obligation to grant letters of administration to some one of the persons thus entitled, and not from the circumstances by which its choice may be determined. Although the Court, in such a case, may grant letters of administration to any one of a class of persons preferred by law, it has no power to discriminate against a person or class so preferred, by granting the letters to one standing in a more remote degree of right. In cases within the verge of this Court's discretion, the argument of the appellee, founded on the policy recognized by the testamentary Code, of confiding the administration of the estates to those who, by relationship to the decedent, are presumed to have the largest interest in the distribution, would be irresistible, but it cannot have the effect of enlarging that discretion beyond the limits fixed by the law conferring it." (Emphasis ours)

This rule has been consistently applied in the State of Maryland. In Carpenter v. Jones, 44 Md. 628, the Court states:

> "But few cases can arise in this State, where the appointment of an administrator is within the discretion of the Orphans' Court. The person entitled is generally designated by our statute, and when so designated the requirement of the statute must be strictly obeyed." (Emphasis supplied)

See also: Kearney v. Turner, 28 Md. 423; McColgan, Admr., v. Kenny, 68 Md. 260.

In Cephalis v. Briscoe, 90 A. (2d) 602, 202 Md. 419, it is stated in part:

> "Where there is only one individual, otherwise qualified, who answers the statutory description of a person entitled, the Orphans' Court must appoint him. Sullivan v. Doyle, 193 Md. 421, 67 A. 2d 246; Stouffer v. Stouffer, 110 Md. 368, 72 A. 843; and Bagby, Maryland Law of Executors and Administrators, Sec. 38." (Emphasis added)

In Lewis v. Logan, 120 Md. 329, 334, 87 A. 750, it is stated in part:

> "In the case of Bowie v. Bowie, 73 Md. 235, Judge McSherry, speaking for the Court said: 'When the statute is silent (as to which one, of a class consisting of several persons, letters of administration shall be granted) the authority to determine this must rest somewhere, and confessedly no tribunal other than the Orphans Court has jurisdiction at all over the subject of the appointment of an administrator. It of necessity follows, then, that whenever the contingency arises, as it must often do, where one of several persons forming a distinct class, all of whom are equally entitled, is to be selected as an administrator, the selection -- the designation of one of them to the exclusion of the others, is committed to the discretion of the Orphans' Court, and this Court has so expressly decided." (Emphasis supplied.)

In Schaumloeffel v. Schaumloeffel, 186 Md. 280, 46 A. (2d) 692, it is stated:

> "Where there is only one individual answering to the statutory description of the person entitled, the law must be strictly obeyed, and he must be appointed. Carpenter v. Jones, 44 Md. 625, 628; Griffith v. Coleman, 61 Md. 260. It is equally clear that the law has conferred upon the orphans' courts the power and discretion of making a selection from a class of persons equally entitled, of the one to receive the appointment. Bowie v. Bowie, 73 Md. 232, 20A. 916; Kailer v. Kailer, 92 Md. 147, 48 A. 712." (Emphasis added)

In Langfelder v. Langfelder, 189 Md. 88, 90, 54 A. (2d) 312, the Court states:

> "The Maryland testamentary statute provides: 'If there be neither surviving husband nor widow as the case may be, nor child, nor grandchild, nor father, the mother shall be preferred, and next to the mother, brothers and sisters shall be preferred.' Code 1939, Art. 93, sec. 22. It is clear that where two or more persons form a distinct class, all of whom are equally entitled to be granted letters of administration, the selection of one of them, without regard to seniority to the exclusion of the others, is committed by the Legislature to the discretion of the Orphans' Court, and from the order of the Court making such determination no appeal will lie. Bowie v. Bowie, 73 Md. 232, 235, 20 A. 916; Dorsey v. Dorsey, 140 Md. 167, 170, 116 A. 915. In the instant case the appellant and the appellee are both in the same class preferred by the statute. Consequently, the Orphans' Court had the authority to make the selection and appoint the appellee, rather than the appellant.
>
> "* * * It is undeniable that the power conferred by the Legislature upon the Orphans' Court to grant letters to one of a class entitled to administration is not an arbitrary or capricious discretion, but a judicial discretion, which must be exercised in accordance with the rules of law laid down by the Legislature. While orders passed in the exercise of the discretion conferred upon the Orphans' Court will not be reviewed by the Court of Appeals, any action taken in contravention or disregard of the plain letter and intent of the statutes prescribing the course it shall pursue in exercising that discretion may be reviewed on appeal." (Emphasis added)

We believe that the rationale of this Court's decision in Randall v. Bockhorst, supra, to be that if any next of kin, as provided in Code Secs. 20-204 through 20-215, who is not barred under a specific statutory disqualification, applies for letters of administration, is entitled to appointment.

Since here we have only two next of kin, i.e., daughter and her widowed stepmother, we believe that the opinion in Randall v. Bockhorst, supra, supports our contention:

> "Moreover, if there is a next of kin who is not barred under a specific statutory disqualification and who applies for letters, a creditor or person not in any preferred classification may not be appointed."

Goldsborough v. Marshall et al., 100 U.S. App. D.C. 134, 243 Fed. (2d) 240 construing Sec. 20-107 D.C. Code (1951) is not in conflict with this.

There, a husband and a daughter, one of six adult children of the deceased wife by a prior marriage, were appointed joint administrators. The daughter moved to remove the husband who had asserted certain claims adverse to the estate.

The Probate Court removed both the daughter and the husband and appointed a stranger. The daughter consented to her removal and the husband appealed. This Court sustained the husband's removal and stated:

> "No question is before us as to whether some other person having a statutory preference should have been appointed in their stead." (An obvious reference to the fact that none of the remaining five adult children applied for administration.)

This leads us to the final question. Was Appellant disqualified by any specific provision of the D.C. Code (1951)? The answer is an emphatic "No!" Sec. 20-101 provides no letters testamentary or administration shall be granted to:

1. A person convicted of an infamous offense.
2. An idiot or lunatic, or a person non compos mentis. (see also Sec. 49-207, D.C. Code, 1951)
3. One under eighteen years of age.
4. An alien.

Appellant's allegations and her qualifications as stated in her petition for letters of administration have not been challenged.

Nor is here a failure to act, as was condemned by Judge Morris In Re: Allen's Estate, 20 Fed. Supp. 243.

The Appellant did nothing to contribute to "the conflict" between herself and the widow, stated in the Order of January 28, 1958, unless, of course, the caveat of a forged will proffered for probate by the widow, or objection to the dissipation of estate assets creates one. Most assuredly, there is no conflict between the Appellant and estate interest.

"The hostility, or antagonism, or whatever it may be, between the widow and the child(ren) in this case, is greatly to be regretted..." (Williams v. Williams, 25 App. D.C. at Page 35), but such "conflict" is not within the purview of 20-101 of the Code.

Nor does this "conflict" render the Appellant "incompetent" within the meaning of 20-215 D.C. Code (1951) that she may be passed over in favor of a stranger.

Under a provision similar to 20-215 of our Code, the Maryland Court of Appeals in Mobley v. Mobley, 149 Md. 401, 131 A. 770, said:

> "...The word 'incapable' found in this final section is not employed to add a fresh disqualification for those otherwise eligible to administer but is a reference to already existing disqualifications, which are created by sections 17 and 53 ...."
>
> * * * * * * * * * *
>
> "The word 'incapable' in section 31 is, therefore, a descriptive term, and was used to avoid the repetition of the disqualifications, which are now specified in Section 53 of Article 93 of the Code ...."

CONCLUSION

Since the Order of January 28, 1958 is final as to the widow, and the daughter is not disqualified, this Court should reverse and remand with instructions to grant letters of Administration to the Appellant.

WARD B. McCARTHY
GEORGE C. VOURNAS
Investment Building
Washington, D. C.
Attorneys for Appellant

SUPPLEMENT

D. C. CODE (1951)	ANNOTATED CODE OF MARYLAND (1957) ARTICLE 93
Sec. 18-701. Distribution--When to be Made. "When the debts of an intestate, exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained for as herein directed, the administrator shall proceed to make distribution of the surplus as follows:"	Sec. 134. Order of Distribution -- in General "When all debts of an intestate exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained as herein directed, the administrator shall proceed to make distribution of the surplus as follows:"
Sec. 18-703. When surviving spouse entitled to one-third. "If there be a widow or surviving husband and a child or children, or a descendant or descendants from a child, the widow or surviving husband shall have one-third."	Sec. 136. Same -- Husband or widow and child or descendants therefrom. "If there be a surviving husband or widow, as the case may be, and a child or children, or a descendant or descendants from a child, the surviving husband or widow, as the case may be, shall have one-third."
Sec. 20-101. Competency -- Determination by probate court. "No letters testamentary or of administration shall be granted to a person convicted of an infamous offense, or to an idiot or lunatic, or person non compos mentis, or one under eighteen years of age, or to an alien; and all questions as to the disqualification on any of said grounds of any person claiming to be entitled to letters testamentary or of administration shall be determined by the probate court after such notice to the said persons as the court may direct."	Sec. 59. Executors disqualified. (Sec. 21. "Qualifications of administrator and executor to be the same.) "If any person named as executor in a will shall be, at the time when administration ought to be granted, under the age of eighteen years, or of unsound mind, incapable according to law of making a contract, or convicted of any crime rendering him infamous according to law, or if any person named as executor shall not be a citizen of the United States, letters testamentary or of administration (as the case may require) may be granted in the same manner as if such person had not been named in the will."
Sec. 20-201. Granting of letters of administration. "On the death of any person leaving real or personal estate in the District, letters of administration on his estate may be granted, on the application of any person interested, on proof satisfactory to the probate court, that the decedent died intestate."	Sec. 20. Proof of intestacy required; Examination by court as to circumstances of death; delay before grant of administration. "It shall be incumbent on the person applying for administration to prove such dying intestate to the satisfaction of the court, unless the same be notorious; and the Court may examine such person on oath, touching the time, place and manner of death, and whether or not the party dying left any will; and if such dying intestate be not proved to the satisfaction of the court, no administration shall be granted. No such administration shall be granted until at least twenty days after the death of the supposed intestate, and at least seven days after application therefor.

Sec. 20-204. Persons entitled to administer -- Surviving spouse or children.

"If the intestate leave a widow or surviving husband and a child or children, administration, subject to the discretion of the court shall be granted either to the widow or surviving husband or to the child or one or more of the children qualified to act as administrator, and further subject to the discretion of the court as follows:" (Emphasis ours)

Sec. 20-216. Persons entitled to administer -- Creditors.

"If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply, it may be granted at the discretion of the court."

Sec. 22. Order of right to administration -- When intestate leaves surviving spouse and child.

"If the intestate leave a surviving husband or widow, as the case may be, and a child or children, administration at the discretion of the Court shall be granted either to the surviving husband or widow, as the case may be, or child, or one of the children."

Sec. 34. Same -- Where there are no relations.

Sec. 35. Same -- Discretion of the Court.

"If there be no relations, administration shall be granted to the largest creditor applying for same."

"If there shall be neither husband nor wife, nor child, nor grandchild, nor father, nor brother, nor sister, nor mother, or if these be incapable, or decline, or refuse to appear on proper summons or notice, or if other relations and creditors shall neglect to apply, administration may be granted at the discretion of the court."

INDEX

	Record Page	Appendix Page
Order Denying Probate of Will	19	1
Petition of Patricia G. Brooks for letters of Administration	20	2
Cross Petition of Mary J. Maholm for letters of Administration	23	4
Answer of Patricia G. Brooks to Cross Petition for letters of Administration	28	7
Reply of Mary J. Maholm to Answer to Cross Petition for Letters of Administration	30	9
Official Transcript of Proceedings before Judge Richmond B. Keech	1	11
Order Granting Administration to William C. DeLacy	33	21
Notice of Appeal	34	22

JOINT APPENDIX

19 [Filed November 25, 1957]
[Register of Wills, D. C.
Clerk of Probate Court]

Recorded Proceedings
Book 261 page 488

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

Doc 188

In re:)
Estate of Walter G. Maholm,) Administration No. 90318
Deceased.)

ORDER DENYING PROBATE

It appearing to the Court that the issues framed in the above-entitled cause were duly submitted to the jury for determination and that said jury answered the first issue, to wit: "Was the said paper writing bearing date the 29th day of March, 1955, the Last Will and Testament of said deceased?" in the negative:

That the jury answered the second issue, to wit: "Did the attesting witnesses to said alleged will, or any of them, sign his or her name as a witness to the said alleged will at the request of and in the presence of the said Walter G. Maholm?" in the negative:

It is, by the Court, this 25th day of November, 1957,

ADJUDGED, ORDERED AND DECREED that the prayers of the petition of Mary J. Maholm for probate and record of the paper writing filed in this cause purporting to be the last will and testament of the said Walter G. Maholm, deceased, be and is hereby denied; that the paper writing dated March 29th, 1955, purporting to be the last will and testament of the said Walter G. Maholm, deceased, be and the same is hereby denied probate and record as such will and testament of said Walter G. Maholm, deceased; and it is further

ADJUDGED, ORDERED AND DECREED that the said Walter G. Maholm, deceased, died intestate.

/s/ Charles F. McLaughlin
Judge

Seen:
R. H. McNeill (s)
Atty. for Caveatee

20 [Filed Nov. 26, 1957, Register of Wills, D.C.]

Petititioner's address is:
928 20th Street South
Arlington, Virginia

PETITION FOR LETTERS OF ADMINISTRATION

The petition of Patricia Gene Brooks respectfully represents to this Honorable Court:

1. Your petitioner is an adult citizen of the United States, a resident of Arlington County, Virginia, and files this petition as the daughter and only child of Walter G. Maholm, the above-named decedent.

2. That the said Walter G. Maholm was a citizen of the United States and a resident of the District of Columbia; that he departed this life on the 9th day of May, 1956 at Garfield Hospital, Washington, District of Columbia.

3. Said decedent left surviving him your petitioner, Patricia Brooks, an adult and his only child, and his only other heir at law and next of kin, an adult, Mary J. Maholm, widow, whose address is 5438 4th Street, N. W., Washington, District of Columbia.

4. As more fully appears of record, the widow, Mary J. Maholm, on, to wit, the 26th day of November, 1956, petitioned for record and probate a paper writing bearing date the 29th day of March, 1955, as the Last Will and Testament of the above decedent, leaving decedent's entire estate to the said Mary J. Maholm, to which petition your petitioner filed a caveat; upon issues framed, the Jury determined that the said paper writing was not signed by the decedent nor acknowledged by him as required by law, and this Court, by its order dated the 25th day of November, 1957, has denied that paper writing to probate and determined that the decedent died intestate.

21 5. That your petitioner has made a diligent search and inquiry for a will of said decedent and has neither found one or obtained any information that there was one, and verily believes that the decedent died intestate.

6. That the decedent left no real estate nor any interest in any real estate in the District of Columbia or elsewhere, so far as your petitioner

has been able to determine.

7. Your petitioner has no personal knowledge as to the personal property left by decedent, but adopts, for the purposes of this petition, allegations of the prior petition that the personal property left by decedent consisted of: U.S. Series "E" Savings Bonds, approximately $4,000.00; cash in safe deposit box, $1,602.00; and 1950 V-8 Ford automobile valued at $235.00 totaling $5,837.00. If your petitioner is appointed Administratrix, she will immediately conduct a personal investigation to determine for herself the personal property left by the decedent and its value, and report to the Court.

8. Your petitioner is without personal knowledge of the debts of the decedent, but adopts the allegations of the prior petition that the debts consisted of: Funeral and hospital bills, $1,066.91; $100.67 due Hill and Sanders, Inc. for automobile repairs; $125.02 due Brinsons' Furniture and Decorating Company for furniture; and Mary J. Maholm, $30.60 for ambulance and minister; totaling $1,322.60.

9. That petitioner is advised that under all of the circumstances, as the decedent's only child, she is entitled to apply for Letter of Administration issue to herself.

WHEREFORE, the premises considered, the petitioner prays:

1. That citation may issue against the above-named heir at law and next of kin, Mary J. Maholm;

2. That Letters of Administration be granted to your petitioner;

3. That your petitioner be permitted to qualify by giving a nominal undertaking; and

4. That the Court grant petitioner such other and further relief as to the Court may seem just and proper.

/s/ Patricia Gene Brooks
Petitioner

22 Burton, Heffelfinger, McCarthy & Kendrick

/s/ Ward B. McCarthy
* * *
Attorneys for Petitioner

/s/ George C. Vournas
* * *
Attorney for Petitioner

[Jurat dated November 26, 1957]

23 [Filed Dec. 6, 1957, Register of Wills, D.C.]

CROSS PETITION FOR LETTERS OF ADMINISTRATION

The petition of Mary J. Maholm respectfully represents to this Honorable Court.

1. That your petitioner is an adult citizen of the United States and a resident of the District of Columbia and files this petition as the widow of Walter G. Maholm, the above-named decedent.

2. That said Walter G. Maholm was a citizen of the United States and a resident of the District of Columbia and departed this life on the 9th day of May, 1956, in said District.

3. Petitioner's deceased husband executed a Last Will and Testament bearing date of the 29th day of March, 1955, which was duly filed in this Court. A caveat to the will was filed by Patricia Brooks, daughter of decedent by a former marriage, and said caveat came on for trial before His Honor, Judge McLaughlin, and a jury upon Issues #1 and #2 duly filed in this Court, and a jury verdict was rendered answering said issues as to due execution and due witnessing of said Will in favor of the caveator and against the validity of said Will and on November 25, 1957, His Honor, Judge McLaughlin, entered an Order bearing said date denying probate of said Will, copy of said Order being hereto attached.

4. Your petitioner respectfully refers to the said Will of her deceased husband, said Walter G. Maholm, on file in this Court, and shows to the Court that she had no knowledge of the execution or existence of said Will until after her husband's death, nor did she know the contents

24 thereof until after her said husband's death, nor did she participate in any way in the procurement of said Will, nor did she do or say anything at any time with respect to the terms and conditions of said Will, whereby she became the beneficiary thereunder.

5. Petitioner further shows to the Court that she was married to said decedent on the 30th day of December, 1954, and during the period of her said marriage she was at all times a true and lawful wife to said decedent, rendering him all possible kindness and service within her power.

6. That the decedent left him surviving your petitioner Mary J. Maholm, an adult, his widow, and Patricia Brooks, his only child by a prior marriage, and that your petitioner and said Patricia Brooks are his only heirs at law and next of kin, said Patricia Brooks residing at 928 20th Street, South, Arlington, Virginia.

7. That decedent left no real estate or interest in real estate in the District of Columbia or elsewhere. That said decedent left personal property located in the District of Columbia, set out in petitioner's petition for ancillary administration herein, which is respectfully referred to.

8. Your petitioner further shows that originally the Last Will and Testament of said decedent was filed for probate by the Executrix named therein, Margaret Maholm, in the City of Indianapolis, State of Indiana, and said Margaret Maholm was appointed by said Court as executrix under said Will; that subsequently your petitioner filed a petition for appointment as ancillary administratrix in the District of Columbia, the assets of said decedent being located in this District, and was appointed as such ancillary administratrix and gave bond, as is fully disclosed by her petition for said appointment in this cause, which said appointment and bond, as petitioner understands, is still outstanding, but subject to such action as the Court may determine upon, and petitioner says that the assets described in her said petition were taken possession of by petitioner under her said appointment and bond and remain in her hands, except for the payment of certain bills owing by decedent, and certain expenses incurred in the defense of his said Last Will and Testament, all of which petitioner realizes is subject to the sound discretion of this Court.

9. Petitioner further shows that the assets of said estate at the time of decedent's death were the following:

(a) 41 - $100 Series E bonds cash value date of death	$3,607.30
(b) Cash - safe deposit box	1,602.00
(c) Ford -1950 V8-appraised by book value at Probate Court.	235.00
Total	$5,444.30

and the debts consisted of the following at the date of his death:

Dr. Millard F. Oltman	$ 36.00
Dr. John F. Finnegan	35.00
Garfield Memorial Hospital	23.75
Caruso, Florist - funeral spray	25.50
Hill & Saunders, repair bill	100.67
Funeral expense	1,066.91
Total	$1,287.83

that since the date of decedent's death and because of the caveat to his will which had to be defended, expenses have been incurred for which said estate is legally liable for counsel fees, court costs, witness' fees, expert witness fees, etc., which aggregate approximately $1,926.43. Petitioner further says that when the caveat to said Will was filed she was required to engage counsel and expert handwriting witness in order to meet the attack on said Will and was also required to procure the attendance of witnesses who gave evidence as to the due execution of said Will and was required to engage services of counsel, Robert I. Marsh of Indianapolis, Indiana, Robert H. McNeill of Washington, D.C., who advised petitioner that they should reasonably be paid fees aggregating $1,000, much of which they have been required to expend for travel expenses, clerical services, etc., which sums for fees and expenses, petitioner knows is subject to the sound discretion
26 of the Court, and the Court was also advised that said counsel had previously represented her in her appointment as ancillary administratrix and had procured the transmittal of the original will and other documents from Indianapolis to Washington, as such counsel, and also had filed petitioner for probate thereof on her behalf.

10. Petitioner is entitled to and hereby claims, as widow's allowance, the sum of $500.00, as fixed by statutes governing the same.

11. Petitioner respectfully represents that she is entitled as matter of law and of right, and in accordance with precedent, to priority of appointment as administratrix of her deceased husband, and she stands ready to give approved bond as such when so appointed.

WHEREFORE, the premises considered, the petitioner prays:

(1) That letters of administration be granted to this petitioner, and that she be permitted to qualify by giving an undertaking in such sum as to the Court may seem just and proper, conditioned for the faithful performance of her trust.

(2) That upon her appointment as administratrix, or in the Court's discretion, that the previous Order of this Court appointing your petitioner ancillary administratrix be cancelled and vacated, the administration of decedent's estate in Indiana having been terminated by cancellation and vacation of Order by said Court admitting decedent's Will to probate in that jurisdiction.

(3) That notice be given to said Patricia Brooks of the pendency of this petition.

(4) That petitioner be accorded the $500.00 due her as allowed by law.

27 (5) That the petition of Patricia Brooks, daughter of decedent, for letters of administration be dismissed.

(6) That the Court grant petitioner such other and further relief as to the Court may seem just and proper.

/s/ Mary J. Maholm
Petitioner.

/s/ R. H. McNeill
* * *
Attorney for Petitioner.

[JURAT, dated December 5, 1957.]

---

28 [Filed Dec. 31, 1957, Register of Wills, D. C.]

ANSWER TO CROSS-PETITION FOR LETTERS OF ADMINISTRATION.

The answer of Patricia G. Brooks in opposition to the cross-petition for Letters of Administration filed by Mary J. Maholm respectfully shows:

1. That the said Mary J. Maholm knew or should have known that the signature to the alleged will of the deceased dated March 29th, 1955

which she offered for probate was, as found by the jury, a forgery.

2. The claim of Mary J. Maholm in Paragraph 9 of her petition against the Estate in the sum of $1,926.43 as expenses for defending against the caveat, an act intended to promote her personal interest as against the interest of the Estate as a whole, should be sufficient for the Court to exercise its discretion under Sec. 20-204 of the Code to deny her petition.

3. The defense of the caveat was not to the benefit of the Estate, but for the sole benefit of Mary J. Maholm, and the costs incurred by Mary J. Maholm should be borne by her alone.

4. Patricia G. Brooks respectfully urges the Court that inasmuch as she, as the daughter of the decedent, is one of the persons entitled to administration under Code Sec. 20-204, that her petition for appointment be approved and that of Mary J. Maholm be denied.

/s/ Patricia G. Brooks

Burton, Heffelfinger, McCarthy & Kendrick

/s/ Ward B. McCarthy

* * *

Attorneys for Petitioner

/s/ George C. Vournas

* * * *

Attorney for Petitioner

---

29 DISTRICT OF COLUMBIA, SS:

Patricia G. Brooks, being first duly sworn, deposes and says: That she has read the foregoing Answer by her subscribed and knows the contents thereof, and the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

/s/ Patricia G. Brooks

[JURAT, dated Dec. 30, 1957.]

[Certificate Of Service]

---

30 [Filed Jan. 28, 1958, Register of Wills, D. C.]

REPLY TO ANSWER TO CROSS-PETITION FOR LETTERS OF ADMINISTRATION

Mary J. Maholm, petitioner for Letters of Administration as the widow of Walter G. Maholm, deceased, replying to the Answer to Cross-Petition for letters of administration served on her counsel and exhibited to her, says:

1. That the Will in question was executed and deposited with an old friend,relative and attorney of decedent, T. Ernest Maholm of Indianapolis, Indiana, and held by him until after the death of the decedent, and this affiant did not know of its existence until after the death of decedent when Mrs. Margaret Maholm, wife of T. Ernest Maholm, notified her of its existence, and that she then knew of it and its contents for the first time; that it follows that she had nothing to do with the execution of said Will and that the implication in the above-described Answer reflecting upon her as though she did have such knowledge is grossly unjust, and without even the shadow of fact upon which to base it, all of which was well known to Patricia G. Brooks who filed said Answer at the time same was prepared and filed. This affiant further says that in her sincere judgment said Will was executed by her deceased husband and signed by him in the presence of the two subscribing witnesses, who so testified, and was not a forgery. She further states that neither of the subscribing witnesses received any benefit from the terms of said Will, as an examination of the same will disclose.

2. Answering paragraph 2 of said Answer to Cross-Petition for Letters of Administration, this affiant says that the items for expenses

31 for defending against the caveat to decedent's will filed by said Patricia G. Brooks were incurred in good faith and are subject to the sound discretion of this Court, and were incurred strictly in accordance with petitioner's understanding of her duty and are believed to be reasonable and just since the duty was upon her to bring before the Court in good faith all the essential facts with respect to said Will and its execution and she earnestly believes the testimony of the subscribing witnesses and of Miss Rose Baxter should have resulted in the approval of said

Will as the last Will and Testament of Walter G. Maholm. She further states that their testimony was strongly supported by the expert evidence of Charles A. Appel, Jr., who testified, like the subscribing witnesses, that the signature to said Last Will and Testament was the signature of the decedent, hence it was the clear duty of affiant in view of such unanimous testimony, contradicted only by the opinion evidence of the handwriting expert Gulickson, to have the matter submitted to the jury. Affiant believes so strongly that the verdict of the jury was wrong that she caused to be prepared and submitted to his Honor, Judge McLaughlin, a Petition for setting the verdict aside on the various grounds set forth in said petition duly filed, but said Judge denied her Motion and the case is now before this Court on the facts with respect to the administration of said estate.

3. In view of all the facts above set out, which cannot be questioned or contradicted, Mary J. Maholm, widow of the above-named decedent, earnestly urges that she is entitled to administer upon her husband's small estate and that the cost of defending his Will should not be thrown upon her but upon the estate.

/s/ Mary J. Maholm
Ancillary Administratrix

/s/ R. H. McNeill
* * * *
Attorney for Mary J. Maholm

---

32 [Verification]
[JURAT, dated Jan. 27, 1958.]
[Certificate of Service]

[Filed March 18, 1958, Register of Wills, D. C.]

OFFICIAL TRANSCRIPT OF PROCEEDINGS

1 January 28, 1958

The above-entitled matter came on for hearing before the Honorable RICHMOND B. KEECH, at 10:00 a. m.

APPEARANCES:

On behalf of Patricia G. Brooks:

WARD B. McCARTHY, Esq.,

On behalf of Mary Maholm:

ROBERT McNEILL

- - - - -

2 PROCEEDINGS

THE COURT: I have been handed this morning a memorandum by Mr. McNeill.

MR. McCARTHY: Mr. McNeill said he sent it to my office and I have not been to my office.

In the estate of Walter G. Maholm, there is before you today a petition and a cross petition for letters of administration.

The petition is filed by Patricia Brooks, the daughter, and the cross petition is by Mary G. Maholm, the second wife.

Both of these stem out of a caveat where only two questions were presented. One, was it the signature of the deceased, and the second, had the deceased acknowledged the will as required?

The jury found that it was not the signature of the deceased and therefore he had not appeared before the witnesses as required.

An order has been entered that the deceased died intestate.

Both the daughter and the widow are in the same class and it is within the discretion of the Court as to which of the two should be appointed.

The daughter says that the widow should not be appointed, primarily because the widow offered for probate a will which gave to the

3 widow everything and which was not her father's will.

The will was such a gross forgery it did not take a handwriting expert to tell it.

I don't know how much Your Honor wants me to go into the background of that.

THE COURT: No more than you think is necessary for the instant question.

MR. McCARTHY: To begin with, the deceased had lived in the metropolitan area since approximately 1917 and 1918.

The will was supposed to have been drafted by his cousin lawyer in Indianapolis, who made himself the attorney and made his wife the executrix.

THE COURT: The attorney's wife?

MR. McCARTHY: Yes. Because they allege in the will that the decedent was a resident of Indiana.

The will was offered for probate out there and admitted.

The attorney and his wife acted as witnesses to the will.

It was brought on here for ancillary letters because of the fact the estate was here.

We have some exhibits here.

This is a blow-up of the signature on the will.

4 These were known signatures of the deceased taken a year before and a year after the supposed will.

The proponent of the will also put in signatures which agreed with our specimens.

It is true that the widow merely took the stand in the caveat case and testified as to certain known handwriting specimens, but did not attempt to testify as to the will itself or to say that it was her husband's will.

I repeat that Mary G. Maholm took the stand and identified the handwriting exhibits.

I will ask counsel to deny that if it is material.

Now, the second reason is that although this is a small estate, something about $6,000 gross, the widow wants something over $1,900

as cost for her defending this caveat which was not for the benefit of the estate but was for her sole benefit.

In other words, now she says to the daughter, "Although the will has been set aside and I do not take the entire estate, you should pay two-thirds of my effort in preventing you to get what you are due."

I have searched the books and I find no case in which the proponent of a forged will has ever been permitted to have his cost, and that is for this reason: The signature was not the act of the decedent.

Conversely, if the decedent does sign his name and acknowledge it and the will is set aside for any other ground, in all those cases, Your
5 Honor, unless there is bad faith they do get their cost and attorney fees.

There is no question about that.

But never will the Court allow expenses where the will is pure forgery.

It would be awarding the unscrupulous their expenses and we say in any event that she did not support this caveat, the widow, for the benefit of her estate, but for her own simple benefit.

We therefore say that the Court should exercise its discretion and give the administration to the daughter.

I think we can take that on the cross petition, all of the proceedings she has done in this court.

Does the Court have any questions?

THE COURT: Not at this time.

MR. McNEILL: May it please Your Honor, there are some circumstances about this case that should be known.

In my mind they were unusual in many respects, particularly the verdict.

I am not here condemning the jury or the fact the Court didn't set the verdict aside.

Those matters have been passed upon and no appeal was taken because the estate was so little.

6 The petition for appointment of administratrix shows here that the

total gross value of the estate is $5,400 and that the actual expenses paid by the widow or to be paid by the administrator will be a minimum of $1,287, not counting anything for the expense of this litigation, meaning that the gross amount of the estate, without reference to the charges in the court trial will be about $4,000.

Under the will the estate was given to the widow, my client, who is applying for administration.

But I must give you some of the historical background of the case. Mr. McCarthy has stated some of it. I think it ought to be stated more fully.

The evidence would show, if it were written up, that a very widely known lawyer in Indianapolis, an old friend and cousin of this decedent, came to Washington to appear before the Supreme Court.

He brought with him, for his own use, a typewriter.

After he got here -- his wife was with him -- this decedent asked him to write his will.

One evening at one of the hotels, at the Capital, a little dinner party was held and the will was prepared in a private room in the presence of the lawyer and his wife, wonderfully fine woman, if I ever saw one, and nobody but them and the testator knew anything about the will.

7 The widow was in the opposite room with a friend, Mrs. Baxter, and knew nothing about it until after it had been brought to Washington for the administration in this jurisdiction.

Here is what happened in Indianapolis:

Mr. Maholm thought this man was domiciled in Indianapolis according to the records, because he paid his taxes out there and voted out there and counted that his home, although he lived here.

Under Indianapolis law, as I understand it from the lawyer who associated with me in this trial and also Mr. Maholm who wrote the will, notice is not required out there except to those mentioned in the will as legatees.

Anyhow, the will was probated out there without any notice being sent to this daughter who lived in Arlington, Virginia.

Mrs. Margaret Maholm was appointed administrator in Indianapolis, gave bond. The estate was here and it soon appeared necessary to have an ancillary administrator.

Having learned this, having asked Judge Marsh of the Indianapolis Bar in Indianapolis, I prepared the ancillary letters.

Under our rules all parties in all hearings have to be notified and notice of that application was served on Mr. McCarthy's client. I saw to it, and of course the Probate Court required it. That service was
8 had.

That raised the question right away as to any rights she might have. The will was caveated by her in Probate Court and of course that meant that we had to have a contest about it.

She got her notice about a caveat and the will was sent by the Court of Indianapolis, the original will, to our Register of Wills here.

When it got here it had to be brought into trial and that trial was held before Judge McLaughlin.

Mr. Maholm was helplessly ill with a heart condition, unable to come to Washington.

Mr. McCarthy, at the expense of the estate, went out there as representing the caveator, and took his deposition, or participated in the taking of the deposition.

That deposition is on file here and it shows that he did this work as an old friend. He received no compensation. He asked for none.

He was not a legatee under the will. He was merely mentioned as an attorney for the estate in Indiana or wherever he was needed. His wife was a party executor.

When she found there was any question about domicile she took a plane and came to Washington and participated and resigned out there and her resignation was accepted, her husband having written up the petition without any suggestion on my part or Judge Marsh's, in order
9 that the record might be clear and his wife might be free from any responsibility.

In the meantime, we had filed an application for administration here.

Mrs. Maholm, my client, the widow, was appointed as ancillary administrator and gave bond and is now under bond.

She has said in her petition that she is prepared at any time to order that appointment cancelled and terminated. She does not seek to hold onto that appointment. She wants to present now the question of her right as the widow to be appointed.

Both Mr. Maholm, his wife, and Mrs. Baxter, all testified before Judge McLaughlin she knew nothing at all about this will until after the death and Mrs. Maholm came to Washington and told her about it in Washington some time after the death of her husband.

Anyhow, she learned about it about a year and a half after the will was actually executed.

Mrs. Maholm is in court and if there was ever a fine woman of high integrity and character, she is one.

I understand the law to be that unless there is some reflection of some character against the widow of a decedent that she has a real priority, a property right, in fact, in the appointment as administrator of his estate.

I have before me section 2204 of our Code.

Undoubtedly you are familiar with these things.

The law says this at 56 Appeals.

(Whereupon, counsel read from the above citation.)

THE COURT: Do you have anything that says that between a wife and a child there is any priority?

MR. McNEILL: I understand that that case holds that the priority goes to the widow unless there is something to call the Court's attention to the undesirability of her appointment.

THE COURT: I understand basically the appointment is in the discretion of the Court. I thought you were saying in the same class between a wife and a child that that case gives the priority to the wife.

MR. McNEILL: I have the case here and I read it to mean that. I think that is the weight of the authority throughout the country.

So that we come to this proposition. Here is a lady who has been

married to this man about 20 months, was with him during all his illnesses.

Now, the will has been set aside. There were two handwriting experts. One said it was his will, Mr. Appel. One said it wasn't, Mr. Gullickson.

The jury chose to follow the opinion of Mr. Gullickson. I have no criticism of that, except I was amazed at that. I thought Appel was the most learned witness I had ever had. But the jury took the view I have just stated.

Now, what was the will and desire of this decedent? Certainly he thought of his wife first. His daughter had lived apart in her own
12 home for 15 years. Her mother was living in the same area, 15 years divorced.

As far as we know, she never saw the decedent, the mother. The daughter said she had seen him from time to time. The wife was with him and took care of him.

The setting aside of the will gives the daughter two-thirds and the wife one-third. To deprive her the right to administer is to deprive her of the small commission she might earn. The question will come up if she is entitled to anything for defending this will.

I don't think anyone would hint that this will -- we had three witnesses come from Indianapolis at somebody's expense. They paid their own way, but of course they expect to be reimbursed. They came here because they were willing to testify in open court about the facts. They did so testify and on this question of handwriting alone this case went off.

There was no contradiction of Mr. Maholm's testimony, no contradiction of his wife that she witnessed it. Both swore they saw him sign the will and this was his signature.

Mr. Appel testified that it was, and defined the will very thoroughly and the points in it that made him believe it.

Mr. Gullickson said it was not his will, although 6 months before
13 that he was uncertain about it until he saw the original will. He had only judged from a photostat prior to that time.

I don't want to belabor this question too much.

If I ever knew a case where there was no reason in the world that could be shown against Mrs. Maholm qualifying, it is this case.

There being so little in it, I believe the Court's discretion should be broadened and exercised in the appointment for the reasons I have outlined.

If the Court would like to have Mrs. Maholm take the stand and ask any questions as to any possible knowledge or participation she had in this matter, I would be glad to have her do so.

She will testify she didn't know there was a will until after her husband was dead and the wife of Mr. Maholm came here and participated in having the will made a part of our records.

THE COURT: Have you ever given any thought to the possibility that the desirable thing would be for neither of these people to be, in the light of what is clear from what you have said, that there is a substantial feeling between the two?

MR. McNEILL: I think that would be more in line that letting the daughter participate, although I have no personal ill will against the
14 daughter.

THE COURT: Apparently there is going to be a contest between the daughter and mother.

MR. McNEILL: Undoubtedly.

I think the only issue hereafter is as to the legitimate expenses. That ought to go to the auditor, or the Court ought to take the time to go into the facts as to the will and the good faith of it, so its discretion could be exercised.

THE COURT: I don't have that before me.

MR. McNEILL: That is the only thing I know of that could be a controversy, the amount of the expenses.

MR. McCARTHY: Of course it is wishful thinking on Mr. McNeill's part to say the purported will was evidence there is no case in our courts that gives the wife priority.

Talking about this execution of this will, this lawyer in Indianapolis was a first cousin and he knew this deceased had come here and he knew he wasn't a resident.

I took his deposition. The man was along in years but he wasn't sick. I never saw a man get out of that place where we were taking that deposition -- it reminded me of these plaintiffs that come in all broken up and can't move around in the courtroom, and let them get a verdict, and watch them go. He was glad to get out of that place.

15 It developed this lawyer had obtained a divorce in Indianapolis for the deceased. He prepared it. He was the Notary. And that petition, if Your Honor please, said that Walter Maholm had lived for 6 months prior to the filing of that petition in Marion County, that being Indianapolis.

If Your Honor will read his testimony as to that, there was a lawyer, supposedly a lawyer, who perpetrated a fraud on his own Court and there is no question about it.

Everything they offered in support of this will was of the unusual.

Here was a man who had been married four months and he didn't want his wife to know about a will, he wanted to surprise her. I say that is preposterous.

That is the time, I understand -- I am not married -- it is in those early months that both the man and woman try to do everything to show their affection for the other. You would think about four months after the marriage he wouldn't want it held secret.

Again this lawyer -- and his testimony was he took it for granted that the deceased was a resident of Indiana and there was not one word of evidence that Maholm paid any taxes out there or voted out there. He said he thought he did. He thought he did. But that was all.

So I say upon the whole matter that certainly the Court should not

16 favor this second wife.

You asked a question of Mr. McNeill as to appointing an outsider.

THE COURT: I put the same question to you.

MR. McCARTHY: I don't think the Court has that right and I will tell you why. I can't give you the name of it. There is a case in which a person of a certain class, whether it was a widow, the husband, I am not too sure, because you remember the Code steps them down, and the Court appointed a party of that class and an outsider as joint administrators.

The Court of Appeals said they couldn't do it.

THE COURT: If I had the authority to do it, wouldn't it be practical and proper?

MR. McCARTHY: If you had the authority, I believe it would.

THE COURT: It would seem to me that would be so where you have a contest of that type, under all the circumstances, with the apparent probability that there is going to be a legal contest.

I will be glad to have the case to which you refer as to lack of capacity for the Court to appoint under certain circumstances. I always thought under the statute where there is recognized priority, all of that was subject to the Court in the interest of the parties and the estate.

Other things being equal, the Code says A, B and C should be
17 priority. In each of those cases it says "in the discretion of the Court."

MR. McCARTHY: That is right. I think where there is a clash --

THE COURT: Unless there be some reason for doing the contrary.

MR. McCARTHY: We have three classes.

THE COURT: Apparently these two people are in the same class and it is in the discretion of the Court to appoint either of them, or if in the best interest of the estate, to appoint someone else.

MR. McNEILL: I think the Court does have that power.

MR. McCARTHY: If you will notice, it says, 205 makes a further provision. It narrows and narrows and the last one is if there be no relatives, or those entitled to decline to, refuse to appear for the administration, then it goes to a creditor. I will have to find the case.

THE COURT: If you find it you give me the citation and call Mr. McNeill.

MR. McNEILL: Give us a few hours.

THE COURT: In matters of this sort it is best to deal with them promptly.

Is that all you have ?

Gentlemen, I will take it, and if you find the case to which you made reference, just call and give the citation and I will get the case and will advise you.

MR. McCARTHY: I have prepared two orders in my favor.

THE COURT: You might show it to Mr. McNeill and I will take one of them.

(Whereupon, at 10:40 a.m., the hearing was concluded.)

* * * *

---

33 [Filed January 28, 1958 - Register of Wills, D.C.]

ORDER GRANTING ADMINISTRATION

Upon consideration of the petition of Patricia G. Brooks, filed herein November 26, 1957, and the cross-petition of Mary J. Maholm, filed December 6, 1957, both for letters of administration, and the oppositions to each petition and arguments of respective counsel in open court, and it appearing to the satisfaction of the Court that Walter G. Maholm, deceased, departed this life intestate and that the best interests of the estate require that a disinterested party be appointed to administer it because of the conflict between the two petitioners, the sole heirs at law, now, therefore, it is, by the Court, this 28th day of January, 1958.

ADJUDGED, ORDERED, and DECREED That William C. DeLacy, Esq., be and he is hereby appointed administrator of the estate of Walter G. Maholm, deceased, and that letters of administration on said estate issue to him upon his filing an undertaking, with security approved by the Court, in the sum of Six Thousand Dollars ($6,000.00), conditioned for the faithful performance of the trust in him reposed.

/s/ R. B. Keech
JUDGE

---

34 [Filed February 26, 1958 - Register of Wills, D.C.]

NOTICE OF APPEAL

Notice is hereby given this 26th day of February, 1958, that Patricia G. Brooks, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 28th day of January, 1958 in favor of William C. DeLacy, Administrator against said Patricia G. Brooks

/s/ Ward B. McCarthy

/s/ George C. Vournas

Attorneys for Patricia G. Brooks

* * *